

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 09/945491

Filing Date: August 30, 2001

Title: ANTIFUSE STRUCTURES, METHODS, AND APPLICATIONS

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REMARKS

As a result of this amendment, claims 1-47, 61, 63-64, 66-69, 71, and 95 are now pending in this application. Of these, claims 7-13, 16-19, 28, 37-47, 61, 63-64, 66-69, and 71 stand rejected on double-patenting grounds; claims 1-5 stand rejected under 35 USC §112, second paragraph as indefinite; claim 6 stands rejected under 35 U.S.C. §102 based on Jain; claims 32-32 stand rejected under 35 U.S.C. §102 or §103 based on Jun; claims 20-27 and 29-31 stand rejected under 35 U.S.C. §102 or §103 based on Velde. New dependent claim 95 finds support at least at Figures 3, 4, and 6.

A detailed response to the rejections follows. However, applicant reserves all applicable rights not exercised in connection with this response, including, for example, the right to swear behind one or more of the cited references, the right to rebut any tacit or explicit characterization of the references, and the right to rebut any asserted motivation for combination. Applicant makes no admission regarding the prior art status of the cited references, regarding them as being only of record.

Response to Double-Patenting Rejection

Claims 7-13, 16-19, 28, 37-47, 61, 63-64, 66-69, and 71 were rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over U.S. Patent 6,288,437. Applicant plans to submit a Terminal Disclaimer and associated fee when the application is otherwise in a complete condition for allowance.

Response to §112 Rejections

The Examiner rejected claims 1-5 under 35 USC § 112, second paragraph as indefinite, citing the phrase "means for moving at least a portion of the second conductive member as a solid unit" as being unclear since the figures in the application show movement of the whole conductive member rather than a portion.

In response, applicant submits respectfully that the cited claim language is not vague or indefinite, and that the rejection appears to be based on scope rather than any vagueness, ambiguity, or indefiniteness in the claim. The claim itself recites unambiguously that the means need only move "at least a portion" of the second conductive member. The recitation of "at least

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a portion" is supported by specification, since movement of the entire second conductive member necessarily includes movement of at least a portion of it.

Accordingly, applicant requests respectfully that the Examiner reconsider and withdraw the 112 rejection.

Response to §102 Rejection Based on Jain

The Examiner rejected claim 6 under 35 USC §102(e) as anticipated by Jain (U.S. 6,107,165). In response, applicant has amended claim 6 to recite that "the layer comprises an amount of hydrogen sufficient upon release to move the one of the first and second noncontacting conductive members." Support for this amendment is found at least at page 9, lines 20-21.

Accordingly, applicant requests respectfully that the Examiner reconsider and withdraw the §102 rejection based on Jain.

Response to §102 and §103 Rejections Based on Jun

The Examiner rejected claim 36 under 35 USC §102(b) as anticipated by Jun (U.S. 5,652,169), particularly citing its Figure 7H. However, in response, applicant submits respectfully that it appears that one of skill in the art would not recognize Figure 7H as meeting all the requirements of claim 7H. For example, claim 36 recites a "structure for a programmable electrical connection." However, Figure 7H shows an electrical connection that is already programmed and thus does not all meet the terms of claim 36.

Accordingly, applicant requests respectfully that the Examiner reconsider and withdraw the §102 rejections based on Jun.

The Examiner rejected claims 32-35 under 35 USC §103(a) as unpatentable over Jun (U.S. 5,652,169). In response, applicant submits respectfully that the rejection is moot with the amendment of claim 32 to recite that the first and second conductive members are "electrically decoupled from the conductive layer." Support for this amendment is found at least at Figures 3, 4, and 6 of the original specification.

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Accordingly, applicant requests respectfully that the Examiner reconsider and withdraw the §103 rejections based on Jun.

Response to §102 and §103 Rejections Based on Velde

The Examiner rejected claims 20-25, 27, and 29 under 35 USC §102(b) as anticipated by Velde (U.S. 4,528,583), particularly citing Figures 1-3 as meeting all the requirements of the rejected claims. Also, the Examiner rejected claims 26, 30, and 31 under 35 USC §103(a) as unpatentable over Velde (U.S. 4,528,583).

In response, applicant submits respectfully that the §102 and §103 rejections fail to allege with any specificity that Velde teaches "first and second conductive members overhanging the top of the chamber." As such the rejections are incomplete and should be withdrawn.

Moreover, applicant submits respectfully that the rejections rely on inherency for certain aspects of the claims, particular the recited high-gas-saturable and low-gas-saturable aspects. MPEP § 2112 mandates that "[i]n relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art."

Here, the Action selectively cites Velde's listing of titanium and platinum as materials for layers 8 and 11, and ignores the fact that Velde reports eight other material combinations for these layers. Specifically, Velde identifies its layer 8 as platinum-nickel alloy, chromium, or titanium, and its layer 11 as nickel, cobalt, or platinum, meaning that there are total of nine (3x3) possible combinations, each of which absent hindsight, appears to have an 11% (1 in 9) probability of selection. Nothing in the Action resolves or even addresses this selection issue. Thus, the Action fails to demonstrate, as required by law, that Velde meets the recited high-low gas-saturability relation as a matter of necessity.

Accordingly, applicant requests respectfully that the Examiner reconsider and withdraw the §102 and §103 rejections based on Velde.

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Conclusion

In view of the amended claims and highlighted remarks, applicant requests respectfully that the Examiner reconsider and withdraw the rejections. Moreover, applicant invites the Examiner to telephone his patent counsel Eduardo Drake (612-349-9593) to resolve any issues, such as the filing of the Terminal Disclaimer that might otherwise delay allowance.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743

Respectfully submitted,

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20 Jan 2004

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I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.

Amy J. Moriarty

Jan. 20, 2004
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